

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSHUA ADAMS,

Plaintiff,

v.

THE ALCOVE RESTAURANT INC., ELIZABETH
PIPA, and VALENTIN PIPA,

Defendants.

ORDER

21-CV-3738 (MKB) (TAM)

MARGO K. BRODIE, United States District Judge:

Plaintiff Joshua Adams commenced the above-captioned action against Defendants The Alcove Restaurant Inc., Elizabeth Pipa, and Valentin Pipa on July 2, 2021, alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, and related New York State and City law. (Compl. ¶¶ 31–74, Docket Entry No. 1.) Defendants failed to appear or otherwise defend the action, and the Clerk of Court entered default against them on November 24, 2021. (Clerk’s Entry of Default, Docket Entry No. 11.) On December 1, 2021, Plaintiff moved for default judgment, (Pl.’s Mot. for Default J., Docket Entry No. 12), and, on January 26, 2022, the Court referred Plaintiff’s motion to Magistrate Judge Taryn A. Merkl for a report and recommendation, (Order dated Jan. 26, 2022).

On March 30, 2022, Defendants’ appeared at a status conference and Plaintiff moved to withdraw its default judgment motion and agreed that the Clerk’s entry of default should be set aside. (Min. Entry and Order, Docket Entry No. 20.) By report and recommendation dated March 31, 2022, Judge Merkl recommended that the Court terminate Plaintiff’s motion in light of Plaintiff’s withdrawal of the motion and set aside the Clerk’s entry of default (the “R&R”).

(R&R 4, Docket Entry No. 21.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

Accordingly, the Court adopts the R&R and, consistent with Judge Merkl's recommendations, (1) terminates Plaintiff's default judgment motion in light of Plaintiff's withdrawal of its motion, and (2) sets aside the Clerk's entry of default. (R&R 4.)

Dated: April 18, 2022
Brooklyn, New York

SO ORDERED:

s/ MKB

MARGO K. BRODIE
United States District Judge